



Montana Legislative Services Division

Legal Services Office

EXHIBIT 5
DATE 2/19/09
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June 27, 2008

Representative Bill McChesney
316 Missouri Avenue
Miles City, Montana 59301

Dear Representative McChesney:

I am writing in response to your request for an analysis of certain issues related to the implementation of House Bill No. 616, enacted as Chapter 387, Laws of 2007. Although some of your request relates to draft rules proposed to implement House Bill No. 616, I will not specifically address the draft rules because the final rules will be reviewed by the staff of the Economic Affairs Interim Committee pursuant to section 5-5-223, MCA. Any specific concerns you have with individual rules should be discussed with the Committee staff and ultimately with the Committee. With this caveat in mind, I will respond to your request.

As you are aware, House Bill No. 616 was designed to fall within an exception to the federal Professional and Amateur Sports Protection Act, codified at 28 U.S.C. 3701 through 3704. The Act generally prohibits sports gambling conducted by a governmental entity or authorized under state laws. The exceptions contained in 28 U.S.C. 3704 include gambling authorized by a state law in effect on October 2, 1991, and actually conducted in that state or other governmental entity at any time during the period beginning September 1, 1989, and ending October 2, 1991. There are also exceptions for parimutuel animal racing or jai-alai games. Fantasy sports leagues were authorized in Montana by Chapter 647, Laws of 1991, effective July 1, 1991.

You have asked for an analysis of two specific issues. The first issue is whether the State Lottery may be involved in the administration of the fantasy sports league parimutuel wagering system. Section 23-7-102(3)(b), MCA, provides that the State Lottery may not carry on any form of gambling permitted by the laws of this state except a lottery game within the scope of section 23-7-102, MCA, and within the definition of "lottery game" contained in section 23-7-103, MCA. A "lottery game" is defined as "any procedure, including any online or other procedure using a machine or electronic device, by which one or more prizes are distributed among persons who have paid for a chance to win a prize and includes but is not limited to weekly (or other, longer time period) winner games, instant winner games, daily numbers games, and sports pool games". Section 23-7-103(4)(b), MCA, provides that "lottery game" does not mean games prohibited by Title 23, chapter 5, part 1, MCA; Calcutta pools governed by Title 23, chapter 5, part 2, MCA; card games regulated by Title 23, chapter 5, part 3, MCA; raffles and bingo games governed by Title 23, chapter 5, part 4, MCA; and sports pools governed by Title 23, chapter 5, part 5, MCA.

Under the definition of "lottery games", the State Lottery may conduct sports pool games but may not operate a sports pool governed by Title 23, chapter 5, part 5, MCA. Section 23-5-501, MCA, defines a "sports pool" as a gambling activity, other than an activity governed under Title 23, chapter 4 or chapter 5, part 2, MCA, in which a person wagers money for each chance to win

money or other items of value based on the outcome of a sports event or series of sports events in which the competitors in the sports event or series of sports events are natural persons or animals. Fantasy sports leagues are authorized and governed by Title 23, chapter 5, part 5, MCA, and horseracing and fantasy sports parimutuel wagering are governed by Title 23, chapter 4, MCA. Therefore, pursuant to section 23-7-102(3)(b), MCA, the State Lottery may not carry on fantasy sports parimutuel wagering because that form of gambling is not a lottery game within the scope of section 23-7-102, MCA, and within the definition of "lottery game" contained in section 23-7-103, MCA.

Your second question concerns whether the fantasy sports parimutuel wagering pools may have fixed odds. Section 23-4-101(10), MCA, defines a "parimutuel facility" as a facility licensed by the Board of Horseracing at which fantasy sports leagues are conducted and wagering on the outcome under a parimutuel system is permitted. Section 23-4-101(11), MCA, defines a "parimutuel network" as an association licensed by the Board of Horseracing to compile and distribute fantasy sports league rosters and weekly point totals for licensed parimutuel facilities and to manage statewide parimutuel wagering pools on fantasy sports leagues. "Parimutuel" is not a defined term in the MCA or in the Administrative Rules of Montana. If a term is not defined, then the term's ordinary meaning as determined by a dictionary is used. See Richter v. Rose, 1998 MT 165, 289 Mont. 379, 962 P.2d 583 (1998), resorting to the dictionary for the meaning of "farm" for eminent domain purposes. Webster's New World College Dictionary, Fourth Edition, defines "parimutuel" as "a system of betting on races in which those backing the winners divide, in proportion to their wagers, the total amount bet, minus a percentage for the track operators, taxes, etc.". According to Wikipedia, parimutuel betting differs from fixed odds betting in that the final payout is not determined until the pool is closed--in fixed odds betting, the payout is agreed upon at the time the bet is sold. Because parimutuel betting by definition involves a "wagering pool", it does not appear that fixed odds wagering is appropriate for parimutuel wagering pools on fantasy sports leagues.

I hope that I have adequately addressed your questions. As discussed earlier, questions or concerns with proposed administrative rules should be addressed through the administrative rule review functions of the Economic Affairs Interim Committee pursuant to section 5-5-223, MCA.

Sincerely,



Gregory J. Petesch
Director of Legal Services

cc: Bart Campbell

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